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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,096	02/02/2004	Andreas Clausen	104035.273434	9273
826	7590	06/23/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			VENKAT, JYOTHSNA A	
		ART UNIT		PAPER NUMBER
				1615

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/770,096	CLAUSEN ET AL.	
	Examiner JYOTHSNA A. VENKAT Ph. D	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 June 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-32 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/15/05 5/11/04, 2/2/04</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

Receipt is acknowledged of IDS filed on 6/15/05, 11/8/04 and 2/2/04. Claims 1-32 are pending in the application and the status of the application is as follows:

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 2, 6-7, 17 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2, 6-7, 17 and 32 would read better by amending “ includes” to “ is”, since the claims are limiting the scope of the compounds in each category. Claims 6-7 lacks antecedent basis. Note that claim 1 has all the components and not claim2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 6,468,514 ('514) and 6,090,773 ('773).

*The instant application is claiming a cosmetic cleansing formulation and a formulation for application to the skin and method for cleansing the skin comprising:*

- a) one or more surfactants selected from the group consisting of sulfates and sulfonates (species is sodium laureth sulfate)*
- b) one or more alkylpolyamphocarboxyglycinate (species is sodium carboxymethyl cocoyl polypropyl amine)*
- c) one or more N-acyl amino acid salts (species is sodium coccylglutamate)*
- d) one or more ethoxylated glycerol isostearate (claims 8, 21 and 29)*
- e) one or more fatty alcohol polyglycol ethers (claims 9, 22 and 30)*

Patent '514 teaches personal cleansing compositions for shampoo using two surfactants.

See the abstract; see col.1, lines 8-11 for the various formulations. Patent teaches cleansing preparations for the skin as well as for hair. See also col.1, lines, 59-64, see col.2, lines 40-42, where the patent teaches that the species claimed under a) has been used with other surface active agents. See also col.2, lines 48-53, see col.4, see col.5, lines 20-50 where the patent teaches the combination of ingredients claimed which are a) and c) and it also teaches that other surfactants can be combined. See col.6, for acylaminoacid salts and see lines 52-53 for the species claimed under c). See all the examples where the patent teaches PEG- 40 hydrogenated castor oil. This belongs to ingredient e). Patent also teaches ethoxylated glycerol palmitates in

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the examples and not the specific ingredient d). Patent at col.5 thus teaches the combination of ingredients a) and c) claimed and also teaches that these two surfactant can be combined with other surfactants. The other surfactants taught by patent at col.5, lines 23-27 belong to the class of amphoteric surfactants. See also claims. Patent does not teach the specific ingredient claimed under b) or ingredient d), which are known as emollient emulsifiers. However patent '773 teaches personal cleansing compositions. See the abstarc and see col.1, where the patent teaches:

In accordance with this invention, there is provided a detergent composition comprising:

a surfactant portion comprising:

1. a nonionic surfactant;
2. an amphoteric surfactant; and
3. an anionic surfactant;

Patent at col.5, teaches the following amphoteric surfactants:

Commercially available amphoteric surfactants are suitable for use in the present invention and include, but are not limited to amphocarboxylates, alkyl betaines, amidoalkyl betaines, amidoalkyl sultaines, amphophosphates, phosphobetaines, pyrophosphobetaines, carboxyalkylalkylpolyamines and mixtures thereof.

Patent '773 thus teaches the equivalency between "amphocarboxylates" of '514 and "alkylpolyamphopolycarboxylglycinates". See col.7, lines 50 et seq and see col.8, where the patent teaches the preferred surfactant in this class, which is the species claimed under b). Patent at col.8, lines 20 *et seq* teaches anionic surfactant and see col.10, lines

45-46 for the preferred anionic surfactants. One of the preferred anionic surfactant is the species claimed under a). Patent teaches non-ionic surfactant and the claimed ingredient d) belongs to non-ionic surfactant. Patent does not use the claimed acid isostearic acid but uses stearic acid. See tables for “PEG-150 distearate”. This belongs to the class of d). See also tables 6 and 8-9. Thus the patent suggests the combination of surfactants.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of ‘514 and add sodium carboxymethyl cocoyl polypropyl amine into the compositions and also add non-ionic surfactant into the compositions expecting beneficial effect. One of ordinary skill in the art would be motivated to add the specific amphoteric surfactant into the compositions of ‘514 in view of the equivalency taught by ‘773 for various amphoteric surfactants. Patent ‘773 teaches equivalency between the amphoteric surfactant of ‘514 and the claimed amphoteric surfactant. One of ordinary skill in the art would be motivated to add the non-ionic surfactant into the compositions of ‘514 with the reasonable expectation of success that the combination of anionic surfactant, co-surfactant N-acyl amino acid salts would benefit the consumer by reducing the binding effect of surfactant to the skin thereby reducing the irritant effect of sodium laureth sulfate and adding the non-ionic surfactant to the compositions also has the additional advantage of manageability, and mild to the children. One of ordinary skill in the art would be motivated to use the shampoo preparation of ‘773 for cleansing the skin with the reasonable expectation of success that the products can also be used for cleansing the skin and it would be less irritating. Absent a showing the criticality of the claimed non-ionic surfactant under d) giving unexpected and superior results commensurate with

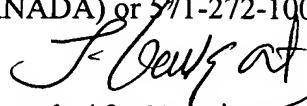
the scope of claims, the claims are rendered *prima facie* obvious over the combination of patents '514 and '733.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JYOTHSNA A. VENKAT Ph. D.  
Primary Examiner  
Art Unit 1615